

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

DERON ALLEYNE,	)	
	)	
PLAINTIFF,	)	
	)	
	)	1:21-CV-01810-CAP-AJB
v.	)	
	)	
FIRST DATA MERCHANT	)	
SERVICES, LLC,	)	
	)	
DEFENDANT.	)	

**REPLY MEMORANDUM IN SUPPORT OF  
DEFENDANT’S MOTION TO DISMISS**

Defendant First Data Merchant Services, LLC (“First Data” or “Defendant”) replies to Plaintiff’s Response in Opposition to Defendant’s Motion to Dismiss as follows.

On April 30, 2021, Plaintiff filed his original Complaint. *See* Doc. No. 1. First Data filed its Motion to Dismiss on May 27, 2021. *See* Doc. No. 8. On June 10, 2021, Plaintiff filed both a First Amended Complaint (now the operative complaint in this case) and his Response in Opposition to Defendant’s Motion to Dismiss on June 10, 2021. *See* Doc. Nos. 9-10. Today (June 24, 2021), First Data filed its Answer and Defenses to the First Amended Complaint.

First Data continues to maintain that Plaintiff did not administratively exhaust the claims articulated in the original Complaint (Doc. No. 1) and the First Amended Complaint (Doc. No. 9). First Data does not withdraw its arguments in its Motion to Dismiss or concede the issues raised in its Motion to Dismiss. *See* Doc. No. 8. Rather, First Data maintains that Plaintiff's discrimination and retaliation claims were not properly exhausted before the Equal Employment Opportunity Commission ("EEOC"). More specifically, Plaintiff did not timely exhaust his claims because he did not file a Charge of Discrimination with the EEOC within 180 days of the adverse employment action at issue. In addition, Plaintiff never exhausted a retaliation claim before the EEOC.

First Data preserves its right to present the defense that Plaintiff failed to exhaust his administrative remedies at a later point in this litigation.

Dated: June 24, 2021

Respectfully Submitted,

/s/ Charles B. Jellinek

Charles B. Jellinek (*admitted pro hac vice*)

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*Attorneys for Defendant*

*First Data Merchant Services, LLC*

**Local Rule 7.1 Certification of Compliance**

I hereby certify that the foregoing pleading has been prepared with Times New Roman font, 14 point, one of the font and point selections approved by the Court in L.R. 5.1, N.D. Ga.

Dated this 24th day of June, 2021.

/s/ Charles B. Jellinek

Charles B. Jellinek

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 24th day of June, 2021, the foregoing was filed with the Court's electronic CM/ECF filing system and also sent via U.S. Mail and email to the following:

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*Attorney for Plaintiff*

/s/ Charles B. Jellinek

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